82-6588

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

NO.

DIANE DANIEL, APPELLANT

v.

WALTER R. COLLIER, APPELLEE

ON APPEAL FROM THE COURT OF APPEALS
OF MICHIGAN
AND SUPREME COURT OF MICHIGAN

JURISDICTIONAL STATEMENT

APR . 1983

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

DIANE DANIEL, the Appellant appeals from the final Judgment opinion and orders of the Michigan Court of Appeals dated February 2, 1982 copy attached to Appendix at P2a-5a; affirming Order of trial Court dated November 18, 1980 copy attached to Appendix P.1a. A timely Application for Leave to Appeal to the Supreme Court of Michigan was DENIED by its Order dated February 22, 1983; APPENDIX P. (6a)

JURISDICTION

The Denial of Application for Leave to Appeal on February 22, 1983 forever denies appellant minor child the right to sue for paternal child support making the opinion and Order of the Michigan Court of Appeals dated February 2, 1982 reviewable as a final judgment.

A Notice of Appeal to this Court was duly filed in the Michigan Court of Appeals, and in the Supreme Court of Michigan. See p. 7a-8a infra. Appendix.

This appeal is being docketed in this Court within 90 days from the Final Order denying of Application for Leave to Appeal in the Supreme Court of Michigan dated February 22, 1983. THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. Sect. 1257(2).

QUESTIONS PRESENTED

I. DOES SEC. 4 OF THE MICHIGAN PATERNITY ACT, MCL Sec. 772.714(b) or MSA 25.494(b) VIOLATE THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION BY PLACING A SIX (6) YEAR TIME LIMITATION ON PATERNAL CHILD SUPPORT ACTIONS OF ILLEGIMATE CHILDREN, WHEN NO RESTRICTION WHATSOEVER IS PLACED ON LEGITIMATE CHILDRENS' PATERNAL SUPPORT ACTIONS?

A. Especially when there is no "substantial" or "compelling" state interest for which the law was enacted being served thereby:

1. Without "compelling state interest" that outweighs the illegitimate childs right to paternal financial support, the child's fundamental right to "life" and enjoyment thereof within the means and ability of his true father;

2. Without "compelling state interest" that outweighs the very purpose of enactment to protect the illegitimate minor's right to such financial support where none existed at Common Law.

3. Without "compelling state interest" that outweights the public interest in enactment to prevent illegitimate children from becoming "public charges" to be supported from taxation on public welfare rolls of the State and National governments.

(a) Especially when illegitmate births nationally for the past year alone amounted to 600,000: 27,000 in Michigan: a problem that involves some $30,000,000 annually and about $1,500,000,000 in Michigan, and births and costs mount annually.

II. DOES Sec 4 of the MICHIGAN PATERNITY ACT MCL Sec. 712.714(b) or MSA 25.494(b) VIOLATE THE 14th AMENDMENT TO THE UNITED STATES CONSTITUTION WHEN THE TIME LIMITATION PERIOD THEREIN FOR PATERNAL SUPPORT OF ILLEGIMATES IS THE ONLY MINOR'S CAUSE OF ACTION WHEREIN THE LIMITATION PERIOD NOT TOLLED, OR SUSPENDED AND EXTENDED, IS FOR THE ENTIRE MINORITY UNDER MICHIGAN LAW MCL Sec. 600.5851 or MSA 27A.5851 TOLLING ANY AND ALL MINORS CAUSES OF ACTION?

CONSTITUTIONAL PROVISIONS AND STATUTES

14th Amendment, United States Constitution.

.....No state shall make or enforce any law which shall abridge the privileges and immunitees of citizens of the United States; nor shall any state deprieve any person of life, liberty, or property without due process of law; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.....

STATUTES

Michigan Paternity Act, Act #205, Public Acts 1956 as amended; Sec. 722.714(b) MCL, Sec. 25.494(b) MSA

"...(b) Proceedings in pursuance of this act may be instituted during the pregnacy of the mother or after birth of the child, BUT SHALL NOT BE BROUGHT AFTER THE LAPSE OF MORE THAN SIX (6) YEARS FROM THE BIRTH OF THE CHILD, unless paternity has been acknowledged by the father in writing in accordance with statutory provision. If any payment is made for support of the child in the six year period, the proceedings may be commenced anytime within six years from the last of any such payment. If the Defendant is outside the state during the six year period, the time he is absent shall not be included in the six year period."

PRESUMPTION OF LEGITIMACY OF CHILDREN

"Sec 25.107 MSA (DIVORCE) (MCL 552.29)

"Sec. 29 The legitmacy of all children begotten before the commencement of any action under this act shall be presumed until the contrary is shown."

MCL Sec. 600.5851, MSA 27A.5851 in pertinent part reads:

Sec 27A,5851 (1) If a person first entitled to.....bring any action is under 18 years of age at the time his claim accrues, he or those claiming under him shall have one (1) year after the disability

is removed...to...bring the action although the period of limitation has run.

RAISING THE FEDERAL QUESTION

At the earliest possible stage, appellant raised the Constitutional violation of the Equal Protection Clause of the 14th Amendment, in Defendant-Appellee's Motion for Accelerated Judgment under Sec. 4(b) of the Paternity Act Statute of Limitations, Trial Court dismissed appellant's petition and held there was no constitutional infirmity. See Trial Court Order P.1a appendix.

The 14th Amendment Violation under the Equal protection clause was reiterated and argued before Court of Appeals, as well as question II raised herein. The Court of Appeals held no constitutional violation of the Equal Protection clause under both questions raised herein and their opinion is attached to the appendix P. 2a - 5a.

The Denial by the Supreme Court of Michigan of Appellant's Application for Leave to Appeal noting "the Court is not presuaded that the question presented should be reviewed by this Court," affirming the Court of Appeals P.6a appendix.

STATEMENT OF THE CASE

Paternity action was filed on March 5, 1980 on behalf of the minor child born December 18, 1973 for paternal child support in the Circuit Court for the County of Saginaw, State of Michigan by and in name of mother as Paternity Act requires upon her going on AFDC for herself and child required by Social Security Act and State regulations. Defendant filed a Motion for Accelerated Judgment involking Sec. 4(b) of the Paternity Act MCL 722.714(b)(MSA 25.494(b)). Trial Court held that the Limitations period in said Sec. 4(b) was not constitutionally infirm. See P 1a appendix for Court's Order dated November 18, 1980.

Appellant appealed to the Michigan Court of Appeals raising the Constitution questions presented herein and Court of Appeals of Michigan by its Opinion and Judgment dated February2, 1982. See Appendix P 2a-5a, held no constitutional violations and affirmed the lower court.

Application for Leave to Appeal to the Supreme Court of Michigan was denied February 22, 1983 copy of which is attached hereto P 6a appendix, from which final Order this appeal was taken invoking 28 U.S.C. Sec. 1257(2).

THE QUESTION IS SUBSTANTIAL

I

The importance of determining whether any period of limitation on the opportunity of children born out of wedlock, termed "illegitmate", is legally justifiable under our system of law which provides Equal Protection of Law to all children in their fundamental right to paternal child support, which encompasses the "right to life" and the "enjoyment thereof", should be readily apparent to this Honorable Court especially in these times when 600,000 illegitimate children were born in the United States last year, 27,000 of which occurred in Michigan. The impact of the numbers of children involved and our public policy to take care of all children whether their parents were married or not, is to be considered under up-to-date and modern socio-economic conditions rether than old common law concepts that created the "legal monster" of illegitimate children. At common law paternal support could not be legally enforced; nor were the Court doors open to entertain such claims. As late as 1973 Court doors were locked against illegitimate children's claims for paternal support in this country, when this Court opened the last door in the GOMEZ v. PEREZ CASE, 400 U.S. 535, 35 L.Ed (2d) 56, 93 S.Ct. 872. (1973)

The Equal Protection Clause requires all persons in a class similarly situated to receive equal opportunity and protection of law. The class we are dealing with is children. The fundamental right involved is paternal child support. There is no difference between children born in and out of wedlock to make them distinguishable because their parents were married or unmarried. The needs of children to life, financial support, education and maintenance during their entire minorities is the same. Neither group of children chose to be born. To limit their rights because of common-law shibboleths is not only unjust, but also illogical in this day and age. Children born out of wedlock have been given a legal remedy to obtain paternal child support in Paternity Acts. In Michigan such an Act first appeared in our Revised Statutes of 1846. The time limit from date of birth for the entire minority during which Court doors are open to entertain claims for paternal support must be the same for illegitimate children as for the legitmate. To say that there is a reasonable time limit on the rights of the illegitimate, while no limit exists for the legitimate clearly denies the illegitmate equal protection of the law. Reasonable limitations if there are to be any on one group must be EQUAL IN TIME DURATION to the others in the class.

To say that in Paternity Cases of the illegitimate, that the father has to be determined gives us a difference class, is to begthe question. In reality in all cases where PATERNAL CHILD SUPPORT IS SOUGHT the Court must make a determination of who is father and then fix an amount of support in accord with his earnings, ability and means. In the child born in wedlock cases there is and has been a so called "presumption of legitimacy", where upon proof of marriage of the parents and date of birth of the child the presumption, though rebuttable; makes the vast majority legal father. Pleadings alone, uncontroverted are

enough in most cases. THIS RULE OF EVIDENCE FROM THE COMMON LAW being MCL 552.29, MSA 25.107 does not create a "special class" of children to be treated more favorable than children whose parents were not married: No attempt is sought to change the rules of evidence merely to keep the Court doors open equally in duration for those born in and out of wedlock. The RULES OF EVIDENCE applied to illegitimate children require proof of paternity by a preponderance of the evidence. Rules of evidence or difficulties of proof in Court does not justify or create sub-classes for whom the doors of Court are closed for 2/3 of the minority. Such reasoning is neither just or logical. To punish the child by closing the door after the first 6 years because his parents were not married, plus his case being much harder to prove is clearly unjust and illogical and contrary to fundamental fairness and our system of justice. The innocent, non-wrongdoing, child in need of support, life, maintenance should not be punished for the sins and wrongdoings of his parents.

The very purpose Paternity Acts were enacted was to grant hapless, innocent children born out of wedlock the right to paternal support where none existed prior under the Common Law, to protect the very fundamental right to life and enjoyment thereof by all children whether their parents were married or not: to require both to support the child for its entire minority.

Further purpose was to prevent these children from becoming "public charges" needing to be supported by public taxation from Commission of the Poor or Public Welfare Departments.

Both of these "compelling" and "substantial" state interests continue in the ever mounting numbers of illegitimate births and welfare costs therefor.

The sole compelling state interest of "stale or fraudulent" claims now argued had no part in the need or reason for enactment, but comes as an after-thought borrowed from Statute of Limitation legalisms in

justification of discrimination against the illegitimate child. The Statute was never created to protect putative fathers from fraudulent and stale claims.

While there is no attempt to make illegitimacy a "suspect classification" as defined in Matthews v. Lucas, 427 U.S. 495 (1976) and Trimble v. Gordon (1977) 430 U.S. 762, 52 L Ed (2d) 31, 97 S. Ct. 1459, the problem dealing with fundamental rights of children, an important and large section of individuals, this Court must be thorough in its scrutiny of the problem; to determine the most compelling state interests to be served. No mere incantation of "stale and fraudulent" claims, the watchword in Statute of Limitations justifications, should be accepted. There is no attempt to attack the concept of Statute of Limitations generally. Such statutes serve their purpose and withstand equal protection scrutiny if they treat all within the classes involved and limited thereby, equally as to time limitations that Court doors are open to such claims.

The illegitimate child's opportunity for Court enforcement is limited to 1/3 of his minority following birth and that of legitimate children for the entire 18 years of minority. The Court door is closed after 6 years serving merely to enforce the rights of wrongdoing putative fathers forgetting the needs of the innocent child for support, a superior compelling Public Interest; as well as the needs of all tax payers welfare costs another superior compelling public interest; both reasons for enactment in the first instance. The legalistic statute of limitations reasoning to prevent "stale and fraudulent" claims makes the statute self-defeating in the original purpose for which it was enacted.

II

Further it must be pointed out any and all cases accruing to minors during their minority in Michigan are tolled, suspended and extended for their entire minority MCL 600.5851, MSA 27A, 5851, EXCEPT FOR THE CAUSE OF ACTION FOR CHILD SUPPORT, only for the illegitimate child. The legitimate child has benefit of this tolling statute for his entire minority. WHY IS THE ILLEGITIMATE'S CLAIM FOR HIS MOST FUNDAMENTAL RIGHT TO LIFE AND ENJOYMENT THEREOF cut short by 2/3 rds? For no other cause of action belonging to children is exception made except in Paternity Cases of the illegitimate. There is no reason for such unequal treatment in the single instance of the most fundamental right of a child to life, dealing with a most compelling state interest to have such children supported by their fathers rather than from public treasury and taxes.

Time has come to heed the admonition of Justice Oliver W. Holmes when he said in HYDE v. U.S. 225 U.S. 347 at 391, 56 L Ed 1114 at 1135(1)

> "It is one of the misfortunes of the law that IDEAS BECOME ENCYSTED IN PHRASES and thereafter CEASE TO PROVIDE FURTHER ANALYSIS." (Emphasis supplied)

"Stale and fraudulent" claims prevention is such an "encysted phrase" that needs deletion from Paternity Statute of Limitation justification, as done in the past.

Surely Justice J. Miller's observation in Plunkard vs. State; 10A. 225 at 227 still holds true, which went as follows:

> "Clearly procreation of illegitimate children cannot be said to be a privilege and immunity of the citizens of the United States".....

nor to be protected by Statutes of Limitations in Paternity Acts. There is no true logical and just reason for treating children born in wedlock superiorily to those out of wedlock in our Courts. The

doors must be open and opportunity same in duration. The rules of evidence and presumptions are not being challenged and will remain the same, but the compelling needs of the children and of the State, its taxpayers and welfare costs--the real compelling interests that caused enactment of the Paternity Act must not be destroyed or limited by legalistic concepts of Statutes of Limitations having no real just or logical basis in the field of child support.

Mills v. Habluetzel 71, L Ed(2) 770, 102 S. Ct 1549 (1982) is the only case touching directly on this specific question by this Court

directly holding the one-year Statute of Limitations denied illegitimate children equal protection of law.

The majority opinion stated:

> "Moreover, this unrealistically short time limitation is NOT SUBSTANTIALLY RELATED TO THE STATE'S INTEREST IN AVOIDING PROSECUTION OF STALE OR FRAUDLENT CLAIMS." (emphasis supplied- 71 L. Ed(2) 779.)

at P 776. 71 L. Ed(2) the Court said:

> "Second ANYTIME LIMITATION placed upon that opportunity must be SUBSTANTIALLY RELATED TO THE STATES INTEREST IN AVOIDING THE LITIGATION OF STALE OR FRAUDULFNT CLAIMS". (Emphasis added.)

It is clear that avoiding stale or fraudulent claims is not a "substantial" or "compelling" state interest that justifies discrimination against the illegitimate child in his claim for paternal support. To say merely a "reasonable opportunity "to assert such claims WITHOUT BEING EQUAL TO BOTH LEGITIMATE AND ILLEGITIMATE is to analyze the problem as one of fundamental fairness or due process, RATHER THAN EQUAL PROTECTION. What is reasonable for the legitimate in duration of Court availability to assert such claims, MUST be equal in duration for the illegitimate.

The Justice O'Connor Opinion part I signed by five Judges leaving only four in the Justice Rehnquist opinion was written for fear that the four year statute of limitations in use since Mills Case was appealed, would be approved, and concludes that there was no "compelling" or "substantial" state interest in any period of limitation when she stated:

> "The risk that the child will find himself without financial support from his natural father seems as likely throughout his minority as during the first year of life. (Emphasis added 71 L Ed(2d) 782.

Further at 71 L Ed(2d) P781 she points out

> "It is also significant to the result today that a paternity suit is one of the few Texas causes of action not tolled during the minority of the plaintiff"

It is clear in the Justice O'Connor Opinion the state interest in preventing stale and fraudulent claims exists, but is undercut by the public interest or policy that genuine claims for child support are satisfied and justice done not only the minors but also to reduce the welfare rolls, both superior in importance and magnitude to the state. Part II of the Justice O'Connor Opinion negates her own reasoning set forth in Part I, agreed to and joined by Chief Justice Berger: Justices Brennan, Blackman and Powell.

This confusing Opinions of the Mills Case need clarification to do true justice and equal protection of the law to the hapless illegitimate in obtaining his fundamental right to paternal support without limitation in time equal to that given to legitimate children.

Further in Mills, Lalli v. Lalli, 439 U.S. 259 (1978) and Parham v. Hughes, 441 U.S. 347 (1979) are cited as examples justifying the "stale and/or fraudulent" claims as a compelling state need. In neither case was a challenge made to limitations statutes. In Lalli the holding is not a matter of when the action had to be started, BUT WHETHER ANY MINOR'S ACTION IS AVAILABLE AT ALL. "Dead Man's Statute", an old Common Law concept prevents the minor to bring an action against a dead person who cannot defend himself,--NOT A STATUTE OF LIMITATIONS PROBLEM AS IN THE INSTANT CASE AT BAR; against living putative fathers.

Parham did not deal with a statute of limitation problem of the minor, RATHER THE RIGHT OF A PUTATIVE FATHER NEVER ESTABLISHED AS LEGAL FATHER IN COURT TO BRING AN ACTION FOR WRONGFUL DEATH OF THE MINOR. Under the Common Law Doctrines of "lack of STATUS" and "unjust enrichment" this putative father, who never acknowledged, legitimized or found to be legal father in a Court, ought not to be allowed to profit from his wrongful denial of paternity to collect damages for the death of a child he

was not legally entitled to sue for. Such Putative Father lacks status to sue and should not be unjustly enriched.

These cases hardly bolster the contention that "stale and fraudulent" claims makes a "compelling" state interest to justify the invidious discrimation against illegitimate children.

The Mills Decision is a start in the right direction, but needs further clarification in this important field of fundamental rights of minors and mounting public costs of welfare and taxation. More apodictic guidelines are forth coming and law must be more than pecksniffian hubris to achieve the just respect it deserves, in this socio-economic problem where the innocent minor has been the "whipping boy" of under-served opprobrium over the centuries for the sins of his parents in improper pre-marital liaisons.

While the law may not be able to erase the ubiquitous persiflage that pervaded illegitmacy through the ages it can grant this unfortunate class of minors a full chance to be supported by their true fathers lifting that burden from the public taxpayers at large as much as possible.

CONCLUSION

For the above reasons, this Court should note probable jurisdiction of this appeal.

All of which is most respectfully submitted,

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APPENDIX

ORDER - TRIAL COURT.....November 18, 1980..... 1a

OPINION AND ORDER - COURT OF APPEALS OF MICHIGAN
February 2, 1982..... 2a - 5a

ORDER DENYING LEAVE TO APPEAL - SUPREME COURT OF MICHIGAN
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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

DIANE DANIEL,

Plaintiff,

vs. FILE NO. 80-00673 DP-2

WALTER R. COLLIER,

Defendant. ORDER

AT A SESSION OF SAID COURT HELD IN THE COURTHOUSE, IN THE CITY OF SAGINAW, COUNTY OF SAGINAW, STATE OF MICHIGAN, ON THE 18th DAY OF NOVEMBER, 1980.

PRESENT: HONORABLE HAZEN R. ARMSTRONG, CIRCUIT JUDGE

Upon reading the Motion for Accelerated Judgment and supporting affidavit by the defendant, WALTER R. COLLIER and hearing arguments of counsel on November 10, 1980 and the Court being otherwise fully informed in the premises,

IT IS HEREBY ORDERED that the Paternity Complaint filed herein be dismissed and the defendant hereby is discharged and his bond cancelled because the statute of limitations has run and the cause of action has expired, MCL 722.714; MSA 25.494.

The Court further finds that the statute is not constitutionally infirm as contended by the Plaintiff.

IT IS FURTHER ORDERED that this Order shall be effective in five (5) days from the date hereof unless objected to by Plaintiff or Defendant.

Hazen R. Armstrong
P 10252
HAZEN R. ARMSTRONG, CIRCUIT JUDGE

COUNTERSIGNED:

CHRISTINE M. SCHWAB
DEPUTY CLERK

A TRUE COPY
Gladys June Ormsby, Clerk

RECEIVED
NOV 20 1980

JEROME E. BURNS, P.C., ATTORNEY AT LAW, SAGINAW, MICHIGAN 48603

STATE OF MICHIGAN

COURT OF APPEALS

DIANE DANIEL,

Plaintiff-Appellant,

v

WALTER R. COLLIER,

Defendant-Appellee.

NO. 54983

BEFORE: Danhof, C.J., and M.F. Cavanagh and Freeman*, JJ.

M. F. CAVANAGH, J.

Plaintiff commenced a paternity action on March 5, 1980, alleging that defendant was the father of her child, who was born on December 18, 1973. Defendant responded with a motion for accelerated judgment in lieu of an answer, raising the six-year statute of limitations defense, MCL 722.714(b); MSA 25.494(b). The trial court granted defendant's motion. Plaintiff appeals as of right.

Defendant in an affidavit accompanying his motion stated that he never acknowledged the child, never contributed to the child's support, and had never been absent from the jurisdiction within the limitation period. Plaintiff did not controvert these facts, but instead claimed that the limitation period was an unconstitutional violation of the equal protection clause of the United States Constitution, US Const, Am XIV, and the Michigan Constitution, Const 1963, art 1, §2. Plaintiff asserted that the limitation period of the paternity act unreasonably limits an action for support of an illegitimate child to a six-year period when legitimate children may maintain an action for support during their entire majority. The trial court disagreed. We affirm the trial court's decision.

MCL 722.714(b); MSA 25.494(b) provides:

"Sec. 4. (a) A proceeding in accordance with this act shall be brought by the mother, the father or the department of social services as provided hereafter. Complaints shall be made in the county where the mother and child * * * or 1 of them reside. If both the mother and child reside outside this state, then the complaint shall be made in the county where the putative father resides or is found. The fact that the child was conceived or born outside of this state * * * shall not be a bar to entering a complaint against the putative father.

"Commencement of proceedings; limitation of actions

"(b) Proceedings in pursuance of this act may be instituted during the pregnancy of the mother or after the birth of the child, but shall not be brought after the lapse of more than 6 years from the birth of the child, unless paternity has been acknowledged by the father in writing in accordance with statutory provisions. If any payment is made for support of the child in the 6-year period, the proceedings may be commenced any time within 6 years from the last of any such payment. If the defendant is outside the state during the 6-year period, the time he is so absent shall not be included in the 6-year period."

The United States Supreme Court has developed a middle-tier test for the purpose of examining alleged equal protection violations based on gender and illegitimacy. This test, sometimes called "rational basis with a bite", emerged from the Supreme Court's decision in Craig v Boren, 429 US 190; 97 S Ct 451; 50 L Ed 2d 397 (1976), in the Court's discussion of an alleged equal protection violation based on gender. A challenged statute alleging discrimination based on illegitimacy must be substantially related to permissible governmental interests, Lalli v Lalli, 439 US 259; 99 S Ct 518; 58 L Ed 2d 503 (1978).

Other state courts have examined the question of statutes limiting the period in which a cause of action for support of an illegitimate child may be pursued. Jurisdictions have come out on both sides of the issue. See Cessna v Montgomery, 63 Ill 2d 71; 344 NE2d 447 (1976), upholding a two-year limitation period, Stringer and Garcia v Dudoich, 583 Pac 2d 462 (N.M. 1978), striking down a two-year limitation period, and County of Lenoir, ex rel Coodell v Johnson, 264 SE 2d 816 (N.C. 1980), striking down a three-year limitation period. The United States Supreme Court in Gomez v Perez, 409 US 535; 93 S Ct 872; 35 L Ed 2d 56 (1973), held that a state may not deny illegitimate children a cause of action against the fathers for support

while permitting legitimate children to bring such actions. After reviewing prior decisions on classifications by legitimacy, the Supreme Court held:

"Under these decisions, a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally. We therefore hold that once a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because its natural father has not married its mother. For a State to do so is illogical and unjust. Weber v Aetna Casualty & Surety Co, supra, at 175, 31 L Ed 2d 768. We recognize the lurking problems with respect to proof of paternity. Those problems are not to be lightly brushed aside, but neither can they be made into an impenetrable barrier that works to shield otherwise invidious discrimination. Stanley v Illinois, 405 US 645, 656-657, 31 L Ed 2d 551, 92 S Ct 1208 (1972); Carrington v Rash, 380 US 89, 13 L Ed 2d 675, 85 S Ct 775 (1965)." Gomez, supra, 538.

The Illinois Supreme Court in Cessna, supra, relied on the decision in Gomez in holding:

"No Supreme Court case had indicated, and Gomez cannot be read to require, that illegitimates be given an unrestricted right throughout their minority to bring a paternity action. The State has a legitimate interest in preventing the litigation of stale or fraudulent claims. (Jimenez v Weinberger, (1974), 417 US 628, 636, 94 S Ct 2496, 2501, 41 L Ed 2d 363, 370.) The State of Illinois Family Study Commission has concluded, even with the two-year limitation period, that paternity actions are beset with coercion, corruption and perjury. (Report and Recommendations to the 76th General Assembly, at 55 (1969).) It may well be that the longer the period between birth and suit the greater the possibility of fraud. At the very least, a defendant's problems of proof are substantially increased. In our judgment the General Assembly, in order to promote the State's legitimate interests, may establish any limitation period it deems appropriate so long as it is not so short as to be tantamount to the impenetrable barrier proscribed in Gomez."

We agree with the Cessna Court. The six-year period of limitations is not unreasonable in light of the state's legitimate interest in discouraging the bringing of stale or fraudulent claims. The statute states that the action "shall be brought by the mother, the father or the department of social services", therefore, the appellant's argument that the current statute unfairly requires the initiation of suit during a time when the child labors under a disability is without merit.

The statute sub judice reasonably limits the period of

time in which the paternity of a child may be affixed on a person not married to the child's mother at the time of the child's conception and birth. The Legislature has determined that the protection of an individual's right to be free from the threat of litigation for more than a reasonable time outweighs the interests of allowing paternity actions to be brought after a six-year period from the child's birth.

Affirmed. No costs.

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, held at the ... Room, in the City of Lansing, on the 22nd day of February in the year of our Lord one thousand nine hundred and eighty-three

CR 37-18

Present the Honorable

G. MENNEN WILLIAMS,
Chief Justice
THOMAS GILES KAVANAGH,
CHARLES L. LEVIN,
JAMES L. RYAN,
JAMES H. BRICKLEY,
MICHAEL F. CAVANAGH,
Associate Justices.

DIANE DANIEL,

Plaintiff-Appellant,

v

SC: 68840
COA: 54983
WALTER R. COLLIER, LC: 80-00673-DP-2

Defendant-Appellee.

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the question presented should be reviewed by this Court.

Cavanagh, J., not participating.

STATE OF MICHIGAN — ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 22nd day of February in the year of our Lord one thousand nine hundred and eighty three

Robin R. Davis Clerk

Dep

IN THE SUPREME COURT OF THE

STATE OF MICHIGAN

DIANE DANIEL, APPELLANT VS WALTER R. COLLIER, APPELLEE.	NO. 68840 COA: 54983

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that DIANE DANIEL, the above-named Appellant, hereby appeals to the Supreme Court of the United States from the final judgment, Opinion and Order of the Michigan Court of Appeals entered February 2, 1980, affirming the Order of Dismissal of the Trial Court rendered November 18, 1980. A timely Application for Leave to Appeal to the Supreme Court of Michigan was "Denied" by its Order on February 22, 1983. This Appeal is taken pursuant to 28 U.S.C. Sec. 1257(2).

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CERTIFICATE OF SERVICE

I hereby certify that true copies of the Notice of Appeal has been placed in the United States mail, first class, postage prepaid, duly sealed and sent to the Clerk of the Supreme Court of Michigan, 925 W. Ottowa, Box 30052, Lansing, Michigan 48909;

Clerk of Court of Appeals, 600 Washington Square Building, P.O. Box 30022, Lansing, Michigan 48909 and to Counsel for Appellee, Jerome E. Burns, Attorney P.C. 4371 State Street, Saginaw, Michigan 48602 Attention: Thomas D. Burkhart, Attorney.

On this 18th day of April 1983.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing JurisdictionalStatement was placed in the United States mail on this 15th day of April, 1983, duly sealed, postage prepaid, first class and addressed to Counsel for Defendant-Appellee, Attorney of Record, Jerome E. Burns, Attorney P.C., 4371 State Street, Saginaw, Michigan, 48602, Attention: Thomas D. Burkhart, Attorney.

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ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

82-
NO. 6583

DIANE DANIEL, APPELLANT

v.

WALTER R. COLLIER, APPELLEE

ANSWER TO MOTION TO DISMISS OR AFFIRM JUDGMENT OF MICHIGAN COURT OF APPEALS

SUPPLEMENTAL JURISDICTIONAL STATEMENT

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THE QUESTION IS SUBSTANTIAL

The issue involved in this case is to determine if the state interest of "preventing stale and fraudulent claims" is SUBSTANTIALLY RELATED TO THE PURPOSE OR OBJECTIVE FOR WHICH THE PATERNITY ACT WAS ENACTED, Weber v. Aetna Cas. and Surety Co, 406 U.S. 164, 31 L.Ed (2d) 768 at 777, (1972); Jimenez v. Weinberger 417 U.S. 628, 41 L. Ed(2d) 363, (1974); U.S. v. Clark 445 U.S. 723 (1980) at 27.

Mere incantation or recital of a state interest without showing a compelling and substantial interest to the purpose the statute sought to achieve is not enough, Matthews v. Lucas 427 U.S. 495 (1976); Trimble v. Gordon, 430 U.S. 762, 52 L.Ed (2d) 31 (1977).

Clearly Paternity Acts were enacted to serve the public need to have children born out of wedlock to have court-enforceable rights to paternal child support denied them at Common Law while children born in wedlock had such rights for their entire minorities, Gomez v. Perez 409.U.S. 535, 35 L. Ed (2d) 56 (1973); and to prevent such children from becoming public charges to be supported by taxpayers and public at large through welfare benefits from tax revenues; Mills v. Habluetzel, _____ U.S._____, 71 L.Ed (2d) 770 (1982).

Michigan public policy in treatment of children born in and out of wedlock is stated in Whybra v. Gustafson 365 Mich 396 (1961):

> "Patently, these provisions seek to express society's concern with support and education of the "child born out of wedlock". IN TERMS OF NEED FOR SUPPORT AND EDUCATION, WE SEE NO DIFFERENCE BETWEEN CHILDREN BORN IN AND OUT OF WEDLOCK. There is no such thing as a 35% child, There is no justification in the statute for an arbitrary rule which limits support from the natural father to 35% of that which might be ordered in a divorce proceedings, or which terminates his obligation to the child in 5 years."
> 365 Mich. 396, at 400 (Emphasis Added)

In Boyles v. Brown, 69 Mich App 480 (1976) the Court stated:

> "Relevant case law further belies the trial court's belief that equality of treatment between legitimate and illegitimate children is contrary to public policy. In Whybra v. Gustafson 365 Mich 396 (1961) our Supreme Court announced a public policy of this state to treat children born out of wedlock as no less deserving of support than those children born in wedlock. The Court stated that, "In terms of need for support and education, we see no difference between childrer born in and out of wedlock." Id.400. (Emphasis supplied)

Limiting the length of time that paternal child support to first six years by a limitation period for child born out of wedlock does not serve to cure the problem of preventing illicit pre-marital liasions and clearly self-defeats the objective of providing child support to innocent children, who had no choice or hand in their being born, their court enforceable fundamental right to life and enjoyment thereof - the legislative purpose of enactment for the best interests of the minor, as well as public policy to give all children the opportunity to use the Courts to secure and enforce such rights.

The personal fundamental right of child support requires heightened and special scrutiny by this Court, Weber v. Aetna; Jimenez v. Weinberger, cited above.

Paternal child support belongs to the child as the name implies, the field of law covers, and the intent and purpose of Paternity Acts. All children need paternal support for their entire minority and the opportunity to obtain same. To limit the time that the Court door must stay open should be the same. Limitations of actions should not be counteranced for 1 year, 2 years, or even the 6 years as it defeats and purpose of the law, and fundamental personal right of child paternal support.

Mills and Pickett Cases held that opportunity limited to 1/18 and 1/9th respectively of the minority of children born out of wedlock to obtain paternal support rights in Court violated the 14th Amendment Equal Protection of Law. The Michigan Act limits the time to 1/3 of such minority is likewise not substantially related to the objectives sought by legislation. Gomez v. Perez (cited above) granted all children the right to paternal child support in the Courts requiring children born out of wedlock to have said right (formerly denied them at Common law). The holding and right itself implicitly requires that the duration of such right and the time the Court door is open to obtain such right likewise be the same for both legitimate and illegitimate children.

To limit the legitimate to a specific period less than the entire minority to obtain the Court enforceable right as that given legitimate is violative of 14th Amendment under the Gomez v. Perez reasoning of this Court.

In Mills/the J. Rehnquist opinion seemed to imply that the period of 1 year was unreasonable, not making it unequivocally clear that unequal treatment of illegimates was violative of 14th Amend.not substantially related to statutory purpose of enactment.

Reasonableness of time is directed more to fundamental fairness and due process considerations. All laws must be reasonable. In a challenge under equal protection of law the reasonableness of time MUST BE EQUAL TO ALL CHILDREN. No child was responsible for its birth whether legitimate or illegitimate.The need for paternal support is the same in both groups. The duration of that fundamentel personal right should likewise be the same, The court enforceable right or Court door remain open for the same period of time. There is no real substantial or compelling state need to treat children differentally as to the duration of their paternal support needs, and opportunity of the child to obtain such need.

No challenge is being made in this appeal to:

(1) The general statute of limitations to causes of action of adult non-disabled litigants as to the reasonableness thereof or time limits thereof.

(2) The "presumption of legitimacy afforded legitimatechildren (born in wedlock)

(3) The rules of evidence that require different burdens of proof in Paternity Cases from that applied in other support actions.

CONCLUSION

A federal substantial constitutional question challenging limitations periods in paternity statutes is raised by this Appeal. Appellant prays that this Honorable Court note this appeal for probable jurisdiction to reverse the Michigan Court of Appeals Decision holding the 6 year limitation period not violative of the Equal Protect of Law under the 14th Amendment to the United States Constitution.

July 29, 1983

All of which is most respectfully submitted.

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CERTIFICATE OF SERVICE

The foregoing hereby certifies that a true and correct copy of the foregoing SUPPLEMENTAL Jurisdictional Statement was placed in the United States mail on this 29th day of July, A. D. 1982, duly sealed, postage prepaid, first class and addressed to Counsel for Defendant-Appellee, Attorney of Record, JEROME E. BURNS, Attorney P.C. 4371 State Street, Saginaw, Michigan, 48602, Attention: THOMAS D. BURKHART, Attorney.

Roy DeGesero

ROY DEGESERO
Counsel for Appellant

No. 82-6583

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

DIANE DANIEL, Appellant,

vs.

WALTER R. COLLIER, Appellee.

MOTION TO DISMISS APPEAL FROM THE MICHIGAN COURT OF APPEALS OR IN THE ALTERNATIVE MOTION TO AFFIRM THE JUDGMENT OF THE MICHIGAN COURT OF APPEALS

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No. 82-6583

IN THE SUPREME COURT OF THE UNITED STATES

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DIANE DANIEL, Appellant,

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MOTION TO DISMISS APPEAL FROM THE MICHIGAN COURT OF APPEALS OR IN THE ALTERNATIVE MOTION TO AFFIRM THE JUDGMENT OF THE MICHIGAN COURT OF APPEALS

The Appeal and Jurisdictional Statement filed on behalf of the Plaintiff Appellant, Diane Daniel, should be denied or in the alternative the Judgment of the Michigan Court of Appeals summarily affirmed. Whether the six year period of limitations found in Michigan's Paternity Act, MCL 722.714(b); MSA 25.494(b), during which paternity must be established denies equal protection of the law in violation of the US Const amend XIV, §1 does not present a substantial federal question. The Appellants second issue, relating to the effect of Michigan's tolling provisions and other

circumstances, was not raised in the trial court nor specifically reviewed by the Michigan Court of Appeals, that court having determined that the cause of action is defined by statute as belonging to the mother, the father or the Department of Social Services.

FACTS OF THIS CONTROVERSY

Diane Daniel, through the offices of the Saginaw County Department of Social Services, initiated an action against Walter R. Collier under the Michigan Paternity Act, MCL 722.711 et seq.; MSA 28.491 et seq., on March 5, 1980. In the Complaint she alleged that Defendant was the biological father of De Entree L. Ezell who was born on December 18, 1973.

A Motion for accelerated judgment, GCR 1963, 116, in lieu of an answer was filed on Defendant's behalf raising the statute of limitations defense. The motion was supported by Defendant's affidavit stating that he had never acknowledged the child, never contributed to the child's support, nor had he been absent

from the State of Michigan within the six year period of limitations, any of which would toll the limitation's period. MCL 722.714(b); MSA 25.494(b).

No counter affidavits challenging these factual matters were filed by Plaintiff. Plaintiff did file an answer to the motion claiming the limitations period was unconstitutional under the equal protection clause of the Federal and State Constitutions because an action could be brought to enforce the support obligation of a child born during marriage, allegedly, at any time during the child's minority.

The trial court dismissed the action and rejected the constitutional argument and granted Defendant's motion. Plaintiff appealed to the Michigan Court of Appeals which affirmed the trial court. Daniel v Collier, 113 Mich App 74; 317 NW2d 293 (1982).

Plaintiff raised for the first time at oral argument before the Michigan Court of Appeals the concern of tolling the action

during the child's minority as most other actions are tolled under Michigan law, MCL 600.5851(1); MSA 27A.5851(1). The Court of Appeals held, consistent with the language of the Paternity Act and prior Michigan precedent, that the cause may be brought only by the mother, father or the Department of Social Services and on that basis rejected the existence of any unequal treatment. The Court found in essence that the child is not a proper party Plaintiff. Daniel v Collier, 113 Mich App 74, 78.

The Court of Appeals also rejected Plaintiff's basic equal protection argument holding that the legislative determination to bar paternity claims first made after six years was "not unreasonable in light of the State's legitimate interest in discouraging the bringing of stale or fraudulent claims." Daniel v Collier, 113 Mich App 74, 78.

The Michigan Supreme Court denied Plaintiff's application for leave to appeal on February 22, 1983. Plaintiff then filed the

Notice of Appeal and supporting documents with this Court.

STATUS OF ILLEGITIMATE CHILDREN IN MICHIGAN

Once paternity is established the mother or other custodian of a child born out or wedlock is entitled to have the level of support determined without consideration of the legitimacy of the child. Whybra v Gustafson, 365 Mich 396; 112 NW2d 503 (1961). Likewise, legitimacy is not a consideration in modifying an order for support. Boyles v Brown, 69 Mich App 480; 245 NW2d 100 (1976).

Under Michigan law the duty to support a child is a joint and several liability of both biological parents. MCL 722.712; MSA 25.492. This joint and several obligation may be enforced by either parent, or a custodian, as part of a divorce judgment or in a separate action, MCL 552.333; MSA 25.221 or MCL 552.451a; MSA 25.222(1a), if the child is born during wedlock.

In line with the general scheme of recognizing a joint liability in the parents to support children the legislature created a cause of action for contribution toward support of children born out of wedlock. The child itself, is not a proper party Plaintiff under the Act. MCL 722.714; MSA 25.494. This is consistent with support actions in Michigan generally. There is no authority for the proposition that under Michigan law a child may, in his own name, sue either parent for support at anytime during or after its minority.

All concerns of level of support or modifications of support can occur, obviously, only after a child's paternity is established. For children born out of wedlock the present paternity act, 1956 PA 205 as amended, this action must be commenced by a proper Plaintiff within six years of the child's birth unless the limitations period is otherwise tolled. It is this restriction which Plaintiff challenges.

The Michigan Court of Appeals has consistently found this limitation on the opportunity to enforce the joint obligation for support to be justified by the State's interest in discouraging the bringing of stale and fraudulent claims and a legislative recognition of the added problems of proof imposed on a putative father by delay. Daniel v Collier, supra, McFetridge v Chiado, 116 Mich App 528; 323 NW2d 470 (1982), Shifter v Wolf, 120 Mich App 182; _____ NW2d _____ (1982).

The period of time allowed for bringing this action is equivalent to that for actions for breach of contract, MCL 600.5807(8); MSA 27A.5807(8) and exceeded only by the time period allowed for such actions as enforcement of Judgments (ten years), MCL 600.5809(3); MSA 27A.5809(3) or recovery of real property (adverse possession, fifteen years), MCL 600.5801; MSA 27A.5801.

Unless this Court is now willing to rule that, as a matter of Federal Constitutional law, a State may not regulate the time within

which an action to establish paternity may be brought or that a State may not regulate the proper party's Plaintiff in such an action the Judgment of the Michigan Court of Appeals must be affirmed.

IMPACT OF MILLS AND PICKETT

This Court first addressed the Constitutionality of a period of limitations to establish paternity in Mills v Habluetzel, 456 US 91; 102 S Ct 1549; 71 L Ed 2d 770 (1982). In Mills the Court struck down the Texas one year limitations period on the child's action for paternal support. Justice Rehnquist stated for the Court:

> "If Gomez [v Perez 409 US 535; 93 S Ct 872; 35 L Ed 2d 56 (1973)] and the equal protection principles which underlie it are to have any meaning, it is clear that the support opportunity provided by the State to illegitimate children must be more than illusory. The period for asserting the right to support must be sufficiently long to permit those who normally have an interest in such children to bring an action on their behalf despite the difficult personal, family, and financial circumstances that often surround the birth of a child outside of wedlock.

> It would hardly satisfy the demands of equal protection and the holding of Gomez to remove an 'impenetrable barrier' to support, only to replace it with an opportunity so truncated that few could utilize it effectively." 456 US 91, _____.

After recognizing that there is a factual and practical difference in paternity actions where the child is born out of wedlock the Court held:

> "... in support suits by illegitimate children more than in support suits by legitimate children, the State has an interest in preventing the prosecution of stale or fraudulent claims, and may impose greater restrictions on the former than it imposes on the later. Such restrictions will survive equal protection scrutiny to the extent they are substantially related to a legitimate State interest. ... The State's interest in avoiding the litigation of stale or fraudulent claims will justify those periods of limitation that are sufficiently long to present a real threat of loss or diminution of evidence, or an increase vulnerability to fraudulent claims."

The Court struck down the Texas period of limitations because it found that one year was not sufficiently long to present a reasonable opportunity to assert the claim and that there was no substantial relation between the one

year limitations period and the State's interest in avoiding litigation of stale or fraudulent claims.

More recently the Court examined the two year period of limitations contained in the Tennessee Paternity Act. The Court struck down this limitation on paternity suits, finding no Constitutionally significant differences between the Tennessee statute with its two year limitation and the one year limitation struck down in Mills. Pickett v Brown, 51 USLW 4655 (US S Ct Docket No. 82-5576, released June 6, 1983). The Court again employed the two-step analysis of Mills with the same results. 51 USLW 4655, 4659. The Court additionally pointed to the distinction in Tennessee law between those children who are likely to become public charges, to whom there was no restriction on the bringing of an action and the fact that Tennessee tolls most actions during a child's minority.

The Michigan statute allows six years for the bringing of an action to establish

paternity. During that six years the mother will certainly have recovered from the financial and emotional burdens which the Court relied upon in striking down the Texas and Tennessee statutes. As pointed out by the Appellant most paternity actions in Michigan are brought by the Department of Social Services. Additionally, Michigan tolls the requirement of bringing a paternity action if the father acknowledges the child, contributes to the child's support or if the putative father is absent from the State. At six years of age the child will have entered school and if the mother is ever to get on with her life she logically would have done so by then.

Justice Brennan, writing for the Court in Pickett referred to the point that under Tennessee law the father's duty of support is owed to the child not to the mother. 51 USLW 4659, n 15. Under Michigan law the obligation is a joint one and the action is in the nature of a one for contribution. As indicated above, Michigan has not to this point recognized the

direct action by a child for support nor was this case argued below on this basis.

Six years is an adequate opportunity to commence an action to determine paternity. It is longer than the time allowed for actions in Michigan generally. The legislative decision to bar suits after six years strikes the proper balance between the State's interest in avoiding excessive welfare burdens, the mother's interest in having contribution to support and the State's interest in having its Courts free from stale claims. It also properly recognizes the increased likelihood of fraudulent claims based on changed circumstances and the additional burdens of proof often recognized by this Court. In the language of the prior cases the six year period of limitations in the Michigan statute bares a substantial relation to the State's interest in avoiding the litigation of stale or fraudulent claims.

The appeal should be dismissed for failure to present a substantial federal question or in the alternative the Judgment of the Michigan

Court of Appeals affirmed for the failure of the Plaintiff to raise the arguments which it now advances either in the trial court or the Court of Appeals.

Respectfully submitted,

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